



Atty. Dkt. No. 026032-4965

IFW DAC
/ \$

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hartwich, Dirk
Title: VEHICLE SEAT
Appl. No.: 10/552,405
International Filing Date: 4/7/2004
371(c) Date: 10/7/2005
Patent No.: 7,467,823
Grant Date: 12/23/2008
Examiner: White, Rodney Barnett
Art Unit: 3636
Confirmation Number: 9309

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 12/23/2008 as U.S. Patent No. 7,467,823.

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the

PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 23 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	23 days
(b) Total Applicant delay:	0 days
Final PTA Determination:	23 days

Applicants therefore respectfully request that the patent be accorded 23 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date February 20, 2009

By 

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (202) 672-5349
Facsimile: (202) 672-5399

Andrew E. Rawlins
Attorney for Applicant
Registration No. 34,702

Patent Term Adjustment Calculation System



Add a new event to this case

Docket Number: 026032-4965
Application Number: 10/552405
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	04/08/2003	-914		
	CLOSE WINDOW ALL CASES SELECT CASE				
Edit Delete	International Filing Date	04/07/2004	-549		
	PCT National Stage Commencement Date	10/08/2005	0		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	04/27/2006	201		
	14 month From Application date	06/27/2007	627		
Edit Delete	Non-Final Office Action	07/05/2007	635	8	
	Non-Final Office Action + 3 months	10/05/2007	727		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	12/05/2007	788		61
Edit Delete	Non-Final Office Action	03/25/2008	899		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/25/2008	991		
Edit Delete	Notice of Allowance	08/27/2008	1,054		
	3 Year Period Starts	10/08/2008	1,096		
Edit Delete	Issue Fee Paid	11/20/2008	1,139		
Edit Delete	Patent Grant Date	12/23/2008	1,172	76	
	Totals:			84	61
	PTA:				23

Created and maintained by

FOLEY

FOLEY & LARDNER LLP

Version: 3.02.05

LOGIN: Raquel Garcia

IP: 10.14.52.227

Foley & Lardner LLP